IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5867 OF 2002

1. Smt.Reshma Ramesh Meher,
   (Kum.Bhamini Jagannath Tandel)
   age adult, residing at
   Kalamb Post Kalamb Tal.Vasai,
   Dist.Thane.

2. Smt.Darshana Dynaneshwar Mistry,
   (Kum.Pushpa Pandurang Nijai),
   aged adult, residing at
   Haji Mohamad Chawl No.167,
   Veer Savarkar Marg, Mahim,
   Mumbai - 400 016. ...Petitioners

V/s.

1. State of Maharashtra
   through its Secretary (Services)
   General Administration Department
   Mantralaya, Mumbai-400 032.

2. Secretary to Government of
   Maharashtra, Social Welfare
   Department, Mantralaya,
   Mumbai - 400 032.

3. Divisional Commissioner,
   Konkan Division,
   Konkan Bhavan, C.B.D. Belapur,
   Navi Mumbai-400 614.

4. Executive Magistrate,
   Vasai Tal.Vasai Dist.Thane. ...Respondents

Shri R.K. Mendadkar for Petitioners.
Shri C.R. Sonawane for Respondents

CORAM : V.G. PALSHIKAR &
V.M. KANADE, JJ.

DATED : JUNE 22, 2006

ORAL JUDGMENT (PER V.M. KANADE, J.) :-

1. By this petition, the petitioners are challenging the Judgment and Order passed by the Maharashtra Administrative Tribunal whereby it allowed the Revision Applications which were filed by the State of Maharashtra and set aside its order dated 15th December, 1997 which was passed in Original Application Nos.920/1993 and 921/1993.

. Brief facts which are relevant for the purpose of deciding the present petition are as under :-

2. The petitioners were granted caste certificates by the competent authority declaring them as belonging to "Mahadeo Koli". On the basis of the said caste certificates, the petitioners appeared for the competitive examination conducted by the Maharashtra Public Service Commission (hereinafter referred to as the "MPSC") for recruitment to the post of clerk under

the reserved category of Scheduled Tribes. The petitioners successfully passed the said examination and thereafter, were appointed on the post of clerk with effect from 21st May, 1982.

3. The respondent no.1 through its Secretary, General Administration Department, Mantralaya, issued a Memorandum dated 5th January, 1993 in which it was stated that the services of the petitioners may be terminated after one month. The petitioners made inquiry from the office of respondent no.1 as to why the said notice was issued and they were informed that the caste certificates which were issued to the petitioners had been cancelled by the Executive Magistrate, respondent no.4 herein.

4. The petitioners, therefore, filed a substantive appeal to the Divisional Commissioner, Konkan Division, Navi Mumbai. The respondent No.3 allowed the appeal of the petitioners and the order passed by respondent no.4 was set aside. The petitioners thereafter filed an application before the MAT, Mumbai Bench being Original

Application Nos.940/1993 and 921/1993. The Division Bench of the MAT by order dated 15th December, 1997 allowed the original applications and set aside the order of termination dated 5th January, 1993 which was issued by respondent no.1 and directed that the petitioners should be reinstated in service forthwith. The MAT observed that the period of absence from the date of termination to the date of reinstatement should be treated as extra ordinary period.

5. Inspite of the order which was passed by the MAT directing the respondent to reinstate the petitioners in service, respondent no.1 did not implement the said order. The petitioners, therefore, filed contempt petitions for non-implementation of the said order. Thereafter, the respondent no.1 filed Review petitions before the MAT.

6. The MAT after hearing the contempt petitions as also the review petitions, passed common order in both the petitions. The Tribunal, however, allowed the Review petitions filed by the State and observed that

the protection granted by G.R. dated 15th June, 1995 could not be given to the petitioners since their services were terminated on 5th January, 1993 before the G.R. had come into existence. Being aggrieved by the said order, the petitioners have preferred the present petition.

7. It was submitted by the learned Counsel appearing on behalf of the petitioners that G.R. dated 15th June, 1995 specifically declared the caste "Koli" and "Other Kolis" as Special Backward Classes and the said G.R. further mentioned that those who were secured employment and promotion on the basis of the caste certificate could not be reverted or terminated from service. It is submitted that by virtue of the order which was passed by the Tribunal on 15th December, 1997, the petitioners were deemed to be in service and therefore, the said G.R. of 1995 was squarely applicable to the petitioners and the protection which was offered by the said G.R. was applicable to the petitioners. It is submitted that therefore, the MAT had committed an error of law apparent on the face of

record and therefore, the order of review which was passed by the Maharashtra Administrative Tribunal dated 3rd April, 1998 was liable to be set aside.

8. The contention made by the learned Counsel for the petitioners will have to be accepted. It is an admitted position that caste certificate was granted to the petitioners by the Executive Magistrate and thereafter, on the basis of the said certificate, they had procured employment and were working in the post of clerk since 1982. Though the services of the petitioners were terminated on 5th January, 1993, the petitioners had preferred appeal and the Divisional Commissioner had allowed the appeal which was filed by the petitioners, thereby accepting the caste of the petitioners as "Mahadeo Koli". Thus, by virtue of the Divisional Commissioner accepting the claim of the petitioners on the date of the termination, the petitioners belong to the "Koli" caste. Even otherwise, the MAT by its order dated 15th December, 1997 had directed the Government to reinstate the petitioners in service forthwith and therefore, on the date of the

filing of the review petitions, the petitioners were deemed to be in service on account of the order which was passed by the MAT on 15th December, 1997. Consequently and as a natural corollary even otherwise, the G.R. which was issued in 1995 had become applicable to the petitioners and the protection which was granted by the said G.R., therefore, was available to both the petitioners. In our view, therefore, the MAT clearly has overlooked both these aspects and therefore, committed an error of law which is apparent on the face of record. The order of the MAT in Review dated 3rd April, 1998, therefore, will have to be set aside and quashed. Writ petition, therefore, is allowed and made absolute in terms of prayer clauses (b), (b1) and (b2) and the order passed by the MAT dated 15th December, 1997 is confirmed. The petitioners should be allowed to resumed their services forthwith.

. The petition is allowed in the above terms.

(V.G. PALSHIKAR, J.)

(V.M. KANADE, J.)